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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/759,647 | 01/16/2004 | Gregory Lynch | P-124656.1 (UTI) | 8072 |

7590 06/02/2005

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EXAMINER

GUTMAN, HILARY L

| | |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
|----------|--------------|

3612

DATE MAILED: 06/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/759,647

Applicant(s)

LYNCH, GREGORY

Examiner

Hilary Gutman

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7,9-13 and 15-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-7,9 and 10 is/are allowed.
- 6) ☒ Claim(s) 11,12,16,17 and 20-23 is/are rejected.
- 7) ☒ Claim(s) 13,15,18 and 19 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The use of the trademark Saran Wrap has been noted in this application. It should be completely capitalized wherever it appears.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 23 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

On lines 9-10, the “severed end to a leading edge thereof when a severed portion” is unclear and awkward. The language of the claim should perhaps be modified for clarity to better recite what the applicant intends to claim. Furthermore, it is unclear what portion of the flexible sheet-like member the applicant considers the “leading edge”.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 11-12, 16-17, and 20-22 are rejected under 35 U.S.C. 102(e) as being anticipated by Faber et al.

For claim 11, Faber et al. ('973) disclose a device for use in at least partially enclosing articles stacked on the bed of a vehicle, the device comprising: a first arm 60 in operative engagement with the vehicle, the first arm moveable between a use (Figure 4) and a non-use position (Figure 1); a first roller (Figure 2B) for rotatable engagement with the arm wherein the roller is "adapted to" removably engage the first arm when disassembled or broken apart; and a first flexible sheet-like member 130 for engagement with the roller.

With regard to claim 12, the first arm is capable of laying substantially flush with a side of the bed of the vehicle when in the non-use position.

With regard to claim 16, the flexible sheet-like member is comprised of net.

With regard to claim 17, the device further includes a second arm 60', a second roller and a second flexible sheet-like member 130'.

With regard to claim 20, the flexible sheet-like members are comprised of nets.

With regard to the limitation that the devices of claims 1 and 11 are used "for" a flatbed trailer, it should be noted that a recitation of the intended use of a claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. With regard to the subcombination devices

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of claims 1 and 11, it is envisioned that the devices of Faber et al. can be capable of use on a flatbed trailer and therefore meet that limitations of the claims as broadly recited and interpreted.

For claim 21, Faber et al. disclose a device for use in at least partially enclosing articles stacked on the bed of a flatbed trailer, the device comprising: a frame for engagement with the flatbed trailer; a pair of arms for pivoting engagement with the frame, the pair of arms moveable from a non-dispensing position to a dispensing position; a pair of flexible sheet members; and a pair of rollers for rotatable engagement with the pair of arms, each of the pair of rollers adapted to receive the flexible sheet members, the rollers for rotational attachment to the arms, the rollers capable of dispensing the flexible sheet material when the arms are in the dispensing position. The pair of rollers can be removable from the pair of arms when disassembled or destroyed.

For claim 22, Faber et al. disclose a device (Figure 3) for use in at least partially enclosing articles stacked on the bed of a flatbed trailer, the device comprising: a first arm in operative engagement with the flatbed trailer, the first arm moveable between a use and a non-use position, a first roller in rotatable engagement with the arm, the first roller having a roller length; and a first flexible sheet-like member for engagement with the roller wherein the first flexible sheet-like member has a first width approximately equal to the roller length and a second width, the second width substantially greater than the roller length, the second width for at least partially enclosing the stacked articles on the bed of a flatbed trailer.

Allowable Subject Matter

6. Claims 1-7 and 9-10 are allowed.

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7. Claims 13, 15, and 18-19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. Claim 23 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Response to Arguments

9. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hilary Gutman whose telephone number is 703-305-0496.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dayoan can be reached on 703-308-3102. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

12. **Any response to this final action should be mailed to:**

Box AF
Assistant Commissioner for Patents
Washington, D.C. 20231

or faxed to:

(703) 872-9327, (for formal communications; please mark "EXPEDITED
PROCEDURE")

or:

(703) 746-3515, (for informal or draft communications, please clearly label
"PROPOSED" or "DRAFT").



Hilary Gutman

May 31, 2005